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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA44

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this final rule to revise the component designations of three agencies for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendations of the agencies concerned, OGE is designating two new components in appendix B to 5 CFR part 2641, and correcting an inadvertent error in the current appendix B listing of a previously-designated component.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Associate Counsel, Telephone: (202) 482–9300.

SUPPLEMENTARY INFORMATION:

I. Background

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest

restriction for senior employees. Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency.

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), three agencies forwarded written requests to OGE to amend their listings in appendix B to part 2641, and on February 7, 2020, OGE published a proposed rule in the **Federal Register** that proposed to revise the component designations of those agencies (85 FR 7252). The proposed rule provided a 30-day comment period, which ended on March 9, 2020. OGE did not receive any comments. The rationale for the proposed rule, which OGE is now adopting as final, is explained in the proposed rule preamble at 85 FR 7252 (Feb. 7, 2020).

For the reasons stated in the preamble to the proposed rule, OGE is: (1) granting the request of the Department of Labor and amending the agency's listing to designate

the Veterans' Employment and Training Service as a distinct and separate component of the Department of Labor for purposes of 18 U.S.C. 207(c); (2) granting the request of the Department of Commerce to designate the Bureau of Economic Analysis as a distinct and separate component of the Department of Commerce for purposes of 18 U.S.C. 207(c); and (3) granting the request of the Department of the Treasury to update the component listed as "Financial Crimes Enforcement Center (FinCEN)" to reflect the component's proper name, "Financial Crimes Enforcement Network (FinCEN)", thereby correcting an inadvertent error in the appendix B listing of this long-designated component.

As indicated in 5 CFR 2641.302(f), a designation "shall be effective on the date the rule creating the designation is published in the **Federal Register** and shall be effective as to individuals who terminated senior service either before, on or after that date." Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this rule for the Veterans' Employment and Training Service and the Bureau of Economic Analysis are effective on the date the final rule is published in the **Federal Register**; the component designation of FinCEN remains in effect as of the original designation date, January 30, 2003.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant

economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The final rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable

principles of regulation set forth in Executive Orders 12866 and 13563. This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a “significant” regulatory action for the purposes of that order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: May 19, 2020.

Emory Rounds,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics amends 5 CFR part 2641, as follows:

**PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST
RESTRICTIONS**

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. app. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Appendix B to part 2641 is amended by revising the listings for the Department of Commerce, the Department of Labor, and the Department of the Treasury to read as follows:

Appendix B to Part 2641 – Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Commerce

Components:

Bureau of the Census.

Bureau of Economic Analysis (effective [INSERT DATE OF PUBLICATION IN
THE FEDERAL REGISTER]).

Bureau of Industry and Security (formerly Bureau of Export Administration)
(effective January 28, 1992).

Economic Development Administration.

International Trade Administration.

Minority Business Development Agency (formerly listed as Minority Business
Development Administration).

National Institute of Standards and Technology (effective March 6, 2008).

National Oceanic and Atmospheric Administration.

National Technical Information Service (effective March 6, 2008).

National Telecommunications and Information Administration.

United States Patent and Trademark Office (formerly Patent and Trademark Office).

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Parent: Department of Labor

Components:

Bureau of Labor Statistics.

Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).

Employment and Training Administration.

Mine Safety and Health Administration.

Occupational Safety and Health Administration.

Office of Disability Employment Policy (effective January 30, 2003).

Office of Federal Contract Compliance Programs (effective December 29, 2016).

Office of Labor Management Standards (effective December 29, 2016).

Office of Workers' Compensation Programs (effective December 29, 2016).

Pension Benefit Guaranty Corporation (effective May 25, 2011).

Veterans' Employment and Training Service (effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Wage and Hour Division (effective December 29, 2016).

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Parent: Department of the Treasury

Components:

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective December 4, 2014).

Comptroller of the Currency.

Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003).

Internal Revenue Service.

United States Mint (formerly listed as Bureau of the Mint).

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